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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 11, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AIDE H., on behalf of J.H., a minor
child,

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

No. 1:20-cv-03101-SMJ

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff Aide H., on behalf of minor child J.H., appeals the Administrative Law Judge's (ALJ) denial of J.H.'s application for Supplemental Security Income (SSI) benefits. She alleges that the ALJ erred by (1) not obtaining a case evaluation from an appropriate specialist based on the record in its entirety; (2) improperly rejecting J.H.'s testimony; (3) improperly assessing the Listings and Domains; and (4) improperly evaluating the opinion evidence. ECF No. 14 at 2. Defendant disputes these contentions and asks the Court to affirm the ALJ's determination. ECF No. 15.

Before the Court, without oral argument, are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. After reviewing the administrative record,

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1 the parties' briefs, and the relevant legal authority, the Court is fully informed. For
2 the reasons discussed below, the Court remands to the Social Security
3 Administration for additional proceedings.

4 **BACKGROUND¹**

5 Plaintiff applied for SSI benefits for J.H. in January 2017, alleging an onset
6 date of January 1, 2014. AR 221.² ALJ Caroline Siderius held a hearing in April
7 2019. AR 42. In May 2019, the ALJ determined that J.H. was not disabled and
8 denied the application. The Appeals Council denied Plaintiff's request for review.
9 AR 1. Plaintiff then appealed to this Court. ECF No. 1.

10 **DISABILITY DETERMINATION**

11 A "disability" is defined as the "inability to engage in any substantial gainful
12 activity by reason of any medically determinable physical or mental impairment
13 which can be expected to result in death or which has lasted or can be expected to
14 last for a continuous period of not less than twelve months." 42 U.S.C.
15 §§ 423(d)(1)(A), 1382c(a)(3)(A). In evaluating an application for benefits for an
16 individual under eighteen years of age, the decision-maker uses a three-step
17 sequential evaluation process to determine whether the claimant is disabled. 20

18 _____
19 ¹ The facts, thoroughly stated in the record and the parties' briefs, are only briefly
summarized here. See ECF Nos. 11, 14, 15 & 16.

20 ² References to the administrative record (AR), ECF No. 11, are to the provided
page numbers to avoid confusion.

1 C.F.R. § 416.924(a).

2 Step one assesses whether the claimant is engaged in substantial gainful
3 activities. If he or she is, benefits are denied. 20 C.F.R. § 416.924(b). If the claimant
4 is not, the decision-maker proceeds to step two.

5 Step two assesses whether the claimant has a severe medically determinable
6 impairment or combination of impairments. 20 C.F.R. §416.924(c). An impairment
7 or combination of impairments is not severe if it is a slight abnormality or
8 combination of abnormalities that causes no more than minimal functional
9 limitations. *Id.* If the claimant does not have a severe medically determinable
10 impairment or combination of impairments, the disability claim is denied. *Id.* If the
11 claimant does, the evaluation proceeds to the third step.

12 Step three compares the claimant's impairment with a number of listed
13 impairments acknowledged by the Commissioner to be so severe as to preclude
14 substantial gainful activity. 20 C.F.R. § 416.924(d). If the impairment meets or is
15 medically or functionally equal to one of the listed impairments and has lasted or is
16 expected to last for a period of at least twelve consecutive months, the claimant is
17 presumed to be disabled. *Id.* The ALJ's assessment of whether an impairment is
18 functionally equal to a listed impairment is based on six "domains," or "broad areas
19 of functioning intended to capture all of what a child can or cannot do." 20 C.F.R.
20 § 416.926a(b)(1). The six domains are:

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- (i) Acquiring and using information;
 - (ii) Attending and completing tasks;
 - (iii) Interacting and relating with others;
 - (iv) Moving about and manipulating objects;
 - (v) Caring for yourself; and
 - (vi) Health and physical well-being.

Id. A child's impairment is functionally equal to a listed impairment if it results in a "marked" limitation in two domains or an "extreme" limitation in any one. *Id.* at § 416.929a(a). A limitation is "marked" if it interferes "seriously" with "[the child's] ability to independently initiate, sustain, or complete activities." *Id.* at § 416.926a(e)(2)(i). A limitation is "extreme" when it interferes "very seriously" with "[the child's] ability to independently initiate, sustain, or complete activities." *Id.* at § 416.926a(e)(3)(i).

ALJ FINDINGS

At step one, the ALJ found J.H. had not engaged in substantial gainful activity since January 20, 2017, the application date. AR 24.

At step two, the ALJ found that J.H. had childhood-onset fluency disorder, which was severe medically determinable impairment. AR 24. She also determined that he had anxiety disorder and depression, which were nonsevere impairments. AR 24-25.

1 At step three, the ALJ found that J.H. did not have an impairment or
2 combination of impairments that met or medically equaled the severity of a listed
3 impairment. AR 25. Nor did he have an impairment or combination of impairments
4 that functionally equaled the severity of the listings. *Id.* The ALJ found that J.H. did
5 not have marked or extreme limitations in any of the six domains. AR 29–35.

6 **STANDARD OF REVIEW**

7 Reviewing courts must uphold an ALJ’s disability determination if it applied
8 the proper legal standards and supported its decision with substantial evidence in
9 the record. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012), superseded by
10 regulation on other grounds. “Substantial evidence ‘means such relevant evidence
11 as a reasonable mind might accept as adequate to support a conclusion.’” *Id.*
12 (quoting *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)).
13 “[W]hatever the meaning of ‘substantial’ in other contexts, the threshold for such
14 evidentiary sufficiency is not high.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153
15 (2019). The ALJ must base its determination on “more than a mere scintilla” of
16 evidence, *id.* at 1154, but need not support its decision by a preponderance of the
17 evidence. *Molina*, 674 F.3d at 1111. If the evidence supports more than one rational
18 interpretation, and the ALJ has supported its decision with inferences drawn
19 reasonably from the record, the Court must uphold its decision. *Id.*; *Allen v. Heckler*,
20 749 F.2d 577, 579 (9th Cir. 1984).

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1 Moreover, the Court will not reverse an ALJ's decision if it committed
2 harmless error. *Molina*, 674 F.3d at 1111. The burden to show harmful error lies
3 with the party challenging the ALJ's determination. See *Shinseki v. Sanders*, 556
4 U.S. 396, 409 (2009).

5 **ANALYSIS**

6 **A. Case Evaluation from an Appropriate Specialist Based on the Record in
7 its Entirety**

8 For a disability claim of an individual under eighteen years old, the ALJ
9 "shall make reasonable efforts to ensure that a qualified pediatrician or other
10 individual who specializes in a field of medicine appropriate to the disability of the
11 individual (as determined by the Commissioner of Social Security) evaluates the
12 case of such individual." 42 U.S.C. § 1382c(a)(3)(I). The qualified pediatrician or
13 other appropriate specialist must base their evaluation on the record in its entirety.
14 *Howard ex rel. Wikff v. Barnhart*, 341 F.3d 1006, 1014 (9th Cir. 2003). The ALJ
15 cannot "construct[] [her] own case evaluation from the evidence in the record." *Id.*
16 Plaintiff argues that the ALJ's reliance on the opinion of Nancy Winfrey, PhD, did
17 not meet her obligations under Section 1382c.³

18 _____
19 ³ The Social Security Administration ("SSA") released Acquiesce Ruling ("AR")
20 04-1(9), which states that an ALJ may satisfy Section 1382c(a)(3)(I) by relying on
either Medical Expert testimony or a State agency consultant in the record. The
record must include the qualifications of the State agency consultant and the ALJ

1 Dr. Winfrey is a clinical psychologist. AR 617. Plaintiff argues that child
2 psychology is not a “field of medicine appropriate to [J.H.’s alleged] disability,”
3 childhood-onset fluency disorder—namely, his stutter. *See* 42 U.S.C. §
4 1382c(a)(3)(I); ECF No. 14 at 5. She contends that the ALJ should have engaged a
5 speech therapist to evaluate J.H.’s case. *Id.* Defendant argues that the ALJ’s
6 determination centered on evaluating J.H.’s “mental functioning, including his
7 ability to acquire and use information, complete tasks, interact with others, and care
8 for himself.” ECF No. 15 at 3. Dr. Winfrey, Defendant asserts, is qualified to offer
9 an opinion regarding J.H.’s ability in those domains. *Id.* Defendant also points out
10 that “Dr. Winfrey testified that she had treated clients who were stutterers and that
11 she [] felt qualified to address that aspect of Plaintiff’s functioning.” *Id.* (citing AR
12 51); *cf. Mendoza v. Comm’r of Soc. Sec.*, No. 4:16-CV-05151-EFS, 2018 U.S. Dist.
13 LEXIS 125005, at *9 (E.D. Wash. March 23, 2018) (finding a psychiatrist’s
14 testimony insufficient under Section 1382c(a)(3)(I) in a case involving a child born
15 without a left ear where the psychiatrist “repeatedly expressed that he was unable
16 to render an opinion as to most of the record” noting that “it would really take a
17

18 must explain how they considered their evaluation. AR 04-1(9). Here, Plaintiff
19 argues that there is no evidence that the ALJ relied on the opinions of the State
20 agency consultants. *See* ECF No. 14 at 5 (citing AR 29, 32–33, 34, 71 & 82–83).
Defendant does not appear to refute this contention. *See generally* ECF No. 15 at
2–4.

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1 pediatrician or a speech pathologist"). This Court finds that the ALJ based her
2 determination that Dr. Winfrey was a qualified specialist in a field appropriate to
3 J.H.'s alleged disability on substantial evidence.

4 But the Court agrees with Plaintiff that the ALJ did not make "reasonable
5 efforts" to ensure Dr. Winfrey evaluated the record in its entirety. *See* 42 U.S.C. §
6 1382c(a)(3)(I). After the hearing, Plaintiff submitted additional evidence and
7 documentation. *See* AR 339–66; 620–35. This included J.H.'s September 2017
8 Stuttering Severity Instrument-4 (SSI-4) score, which indicated that his stuttering
9 remained "very severe," AR 622, his 2018 school records, which indicated he still
10 needed special education and accommodations, AR 339–47, and his treating
11 physician's finding that J.H. remained markedly limited in completion of oral tasks
12 in April 2019, AR 635. As the record continued to grow, with new and relevant
13 evidence, the ALJ should have made efforts to receive an updated opinion from Dr.
14 Winfrey or another qualified specialist, whether through interrogatories or
15 otherwise. *See Jensen v. Colvin*, 2015 U.S. Dist. LEXIS 34627, at *21–23 (E.D.
16 Cal. Mar. 18, 2015). The ALJ's error is especially significant because of her reliance
17 on J.H.'s supposed improvements. *See* AR 26.

18 **B. Assessment of J.H's testimony**

19 When a claimant is not malingering and has provided objective medical
20 evidence which may reasonably produce the symptoms alleged, an ALJ may reject

1 that claimant's symptom testimony "only by providing specific, clear, and
2 convincing reasons for doing so." *Brown-Hunter v. Colvin*, 806 F.3d 487, 488–89
3 (9th Cir. 2015). The ALJ must "identify the testimony she found not credible" and
4 "link that testimony to the particular parts of the record supporting her non-
5 credibility determination." *Id.* at 494. An ALJ must make sufficiently specific
6 findings "to permit the court to conclude that the ALJ did not arbitrarily discredit
7 [the] claimant's testimony." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
8 2008) (citations omitted). General findings are insufficient. *Lester v. Chater*, 81
9 F.3d 821, 834 (9th Cir. 1995). "The clear and convincing standard is the most
10 demanding required in Social Security cases." *Moore v. Comm'r of the Soc. Sec.*
11 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002).

12 The ALJ discounted J.H.'s testimony as inconsistent because he has
13 "improved over time." AR 26. Plaintiff argues this is insufficient to reject his
14 testimony, and that J.H.'s testimony is not inconsistent with the evidence, even the
15 evidence of any improvements. ECF No. 14 at 6–7. This Court agrees.

16 The effectiveness of treatment is relevant to the evaluation of a claimant's
17 symptom testimony. 20 C.F.R. § 416.929(c)(3). But the mere fact that a person
18 "makes some improvement does not mean that the person's impairments no longer
19 seriously affect" their functioning. *See Holohan v. Massanari*, 246 F.3d 1195, 1205
20 (9th Cir. 2001). The ALJ must consider any improvement "in context of the overall

1 diagnostic picture.” *Id.* J.H. testified that his stuttering had improved since he was
2 younger, but that his stuttering still affects him. AR 56–59. The ALJ failed to
3 explain how this testimony is inconsistent with the evidence. *See* AR 25–35.

4 The ALJ also emphasized that J.H.’s stutter affected him most severely when
5 he is anxious or around new people. AR 26–27. Plaintiff argues that this is
6 consistent with J.H.’s testimony and relevant to the ALJ’s analysis of the Listings
7 and Domains. ECF No. 14 at 8. For example, Domain 3 states that adolescents, like
8 J.H., should “intelligibly express [their] feelings, ask for assistance in getting needs
9 met, seek information, describe events, and tell stories, in all kinds of environments
10 (e.g., home, classroom, sports, extra-curricular activities, or part-time job), *and* with
11 all types of people (e.g., parents, siblings, friends, classmates, teachers, employers,
12 and strangers)” 20 C.F.R. § 416.926a(i)(2)(v).

13 The “whole child” approach requires the ALJ to

14 begin by considering how the child functions every day and in *all*
15 settings compared to other children the same age who do not have
16 impairments. After [they] determine how the child functions in all
17 settings, [they] use the domains to create a picture of how, and the
18 extent to which, the child is limited by identifying the abilities that are
19 used to do each activity, and assigning each activity to any and all of
the domains involved in doing it. [They] then determine whether the
child’s medically determinable impairment (s) accounts for the
limitations [they] have identified. Finally, [they] rate the overall
severity of limitation in each domain to determine whether the child is
“disabled” as defined in the Act.

20 SSR 09-1p, 2009 SSR LEXIS 1, at *6 (March 19, 2009) (emphasis added).

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1 Defendant responds that “[t]he mere fact that [J.H.]’s stuttering was worse when he
2 was nervous or around strangers does not mean that he had a marked or extreme
3 limitation[] in any functional area.” ECF No. 15 at 14. Nor, Defendant contends,
4 does it mean that J.H. had a “serious limitation in communicating” which would
5 render him disabled. *See* 20 C.F.R. Part 404, Subpart P, App’x 1, § 111.09A (stating
6 under the listings, the ALJ needs evidence that a speech deficit causes a “serious
7 limitation in communicating, and a person who is unfamiliar with you cannot easily
8 understand or interpret your speech”). While the Court agrees that the “whole child”
9 approach does not require the ALJ to find J.H. disabled if he has limitations in any
10 activities, it does require the ALJ to consider his limitations in all contexts. *See* SSR
11 09-1p, 2009 SSR LEXIS 1, at *6.

12 Although Defendant points to several places in the record to show J.H.’s
13 improvements, the record as a whole appears to show only limited strides. For
14 example, a year before Plaintiff applied for disability benefits, in early 2016, J.H.’s
15 stuttering tested in the “very severe range.” AR 321. But at about the time of the
16 application date, early 2017, his individual education plan (IEP) noted only “mild
17 stuttering severity.” AR 246. Nine months later, in late 2017, a speech pathologist
18 reported that J.H. was a “health[y] teenager and he plays football and soccer in
19 school” and that his medical and developmental history was “unremarkable.” AR
20 621. In this same evaluation, though, his SSI-4 score indicated that J.H.’s stuttering

1 was, once again, “very severe.” AR 621–22.

2 Over a year later, in late 2018, a stuttering evaluation showed “moderate”
3 stuttering and J.H. indicated was “not quite ready yet” to cease accommodations at
4 school. AR 306. The school district at that time also determined J.H. continued to
5 qualify for speech and language therapy, and that his stuttering still “adversely
6 affect[ed] his ability to communicate his academic knowledge, wants and needs in
7 the classroom, with peers, and at home.” AR 307. J.H.’s teachers reported that his
8 stuttering did not affect his performance in classes which required little oral
9 participation. *See* AR 305. But his teachers also noted that J.H. “continue[d] to
10 struggle expressing his thoughts and ideas due to his dysfluencies.” *Id.* He still
11 stuttered more than ten percent of the time during a speaking task in 2018. AR 306.
12 And he had “[l]imited intelligibility due to initial syllable, word, and phrase
13 repetitions, as well as prolongations.” AR 307.

14 Taken together, the Court cannot find that the ALJ presented clear and
15 convincing evidence for rejecting J.H.’s testimony. The ALJ provided no analysis
16 to support her assertion that J.H.’s testimony was *inconsistent* with the medical
17 evidence. J.H. may have made certain strides, but that does not mean that he does
18 not still experience marked or severe limitations rendering him disabled. The ALJ
19 has not met its “demanding” standard. *See Moore*, 278 F.3d at 924.

20 //

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1 **C. Evaluation of the Opinion Evidence**

2 **1. Lay Witnesses**

3 The testimony of a lay witness alone can never establish disability. 20 C.F.R.
4 § 416.929(a), (b) (“[S]tatements about [a claimant’s] pain or other symptoms will
5 not alone establish that [the claimant is] disabled. There must be objective medical
6 evidence from an acceptable medical source that shows [the claimant has] a medical
7 impairment(s).”). And to reject a lay witness’s opinion, the ALJ need only cite a
8 “germane” reason for doing so. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th
9 Cir. 2005) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)) “Inconsistency
10 with medical evidence is one such reason.” *Id.* (upholding ALJ’s rejection of
11 symptom testimony by claimant’s spouse and friends where inconsistent with
12 objective medical evidence).

13 **i. Plaintiff**

14 Plaintiff contends the ALJ did not assess the weight owed to her relevant
15 opinion evidence, and thus did not provide “germane” reasons for discounting her
16 testimony. ECF No. 14 at 17. Plaintiff completed a function report, explained that
17 J.H. did not seem to make progress in 2017, gave input for J.H.’s IEPs, and attended
18 treatment visits. *See* AR 227, 262, 314, 332, 370 & 463. Parents provide “important
19 sources of information because they see [the child] every day.” 20 C.F.R. §
20 416.924a(a)(2)(i). An ALJ must explicitly explain why they reject significant,

probative evidence. *Flores v. Shalala*, 49 F.3d 562, 570–71 (9th Cir. 1995). Although the ALJ considered Plaintiff’s opinion, she erred by not making an express credibility finding. *See, e.g.*, AR 27, 32; *cf. Lewis*, 236 F.3d at 511–512. It is thus unclear to what extent the ALJ credited Plaintiff’s testimony.

ii. Mr. Ruiz

Plaintiff also contends that the ALJ did not provide a germane reason for refusing to fully credit J.H.’s teacher, Bulmaro Ruiz’s, opinion. Teachers can provide insight of a claimant’s day-to-day functioning, especially compared with other children without impairments. 20 C.F.R. § 416.924a(a)(2)(ii). The ALJ stated she gave Mr. Ruiz’s opinion only “some weight,” but agreed that J.H. had “some limitations” interacting and relating to others and acquiring or using information. AR 28. She also credited his opinion as “helpful.” *Id.*

An ALJ harmfully errs if she fails to address a source’s statements that, if properly credited, would compel disability. *Hill v. Astrue*, 698 F.3d 1153, 1160 (9th Cir. 2012). Mr. Ruiz opined that J.H. suffered “very serious problems,” which Plaintiff argues are consistent with at least marked limitations in Domains 1, 3, and 5. AR 249, 251. But the ALJ merely stated that she gave his opinion “some weight.” AR 28. The ALJ erred by not providing a germane reason for rejecting Mr. Ruiz’s opinion.

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1 **2. Medical Opinions**

2 The Ninth Circuit recognized a hierarchy among the sources of medical
 3 opinions, known as the treating physician rule or the treating source rule, for claims
 4 filed before March 27, 2017.⁴ *Murray v. Heckler*, 722 F.2d 499 (9th Cir. 1983); *see*
 5 *also* 82 Fed. Reg. 5844, 5853 (Jan. 18, 2017); *Black & Decker Disability Plan v.*
 6 *Nord*, 538 U.S. 822, 829 (2003). Specifically, the ALJ must articulate “specific and
 7 legitimate reasons supported by substantial evidence in the record” in order to
 8 “reject the treating doctor’s ultimate conclusions” when the treating doctor’s
 9 opinion was contradicted by another doctor, or “clear and convincing reasons” if it
 10 was not. *Lester*, 81 F.3d at 830–31. And “[t]he opinion of a nonexamining physician
 11 cannot by itself constitute substantial evidence that justifies the rejection of the
 12 opinion of either an examining physician *or* a treating physician.” *Id.* at 831. The
 13 ALJ must point to other evidence in the record which supports the nonexamining
 14 physician’s opinion. *Id.*

15 **i. Dr. Heisey**

16 The ALJ gave “some weight” to Dr. Heisey’s two reports in this case. AR
 17 28. Dr. Heisey’s first report found that J.H. had marked limitations in Domain 3 and
 18 his second report found that J.H. had marked limitations attending and completing

19
 20 ⁴ The regulations were updated in 2017 to eliminate this hierarchy for new claims.
See 20 C.F.R. § 404.1520c.

1 oral tasks, which corresponds to Domain 2. AR 456, 635. The ALJ determined that
2 Dr. Heisey did not adequately explain why J.H. was “so severe” in Domain 3. AR
3 28. The ALJ rejected his second report because it was only a “check mark” and did
4 not give an explanation or objective findings to support his conclusion. *Id.* Finally,
5 the ALJ questioned why Dr. Heisey noted only the Domain 2 limitations in his
6 second report. *Id.*

7 Plaintiff argues the ALJ erred in not giving full weight to each report. For the
8 first report, she points to Dr. Heisey’s explanation that his Domain 3 assessment
9 was because of J.H.’s difficulties with verbal communication. AR 456. She also
10 argues that the ALJ should not have rejected the checkbox report because the
11 opinion is based on the physician’s experience and supported by the record. ECF
12 No. 14 at 19 (citing *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014)). Finally,
13 Plaintiff argues that Dr. Heisey’s Domain 2 findings were related to a more focused
14 questionnaire, rather than changes in J.H.’s functioning. *Id.*

15 While it is certainly possible to interpret the record in the way advanced by
16 Plaintiff, the ALJ provided substantial evidence for giving Dr. Heisey’s opinion
17 only some weight. It is ALJ’s responsibility to resolve ambiguities in the record,
18 which the Court finds occurred here. See *Ford v. Saul*, 950 F.3d 1141, 1149 (9th
19 Cir. 2020). The ALJ reasonably concluded that Dr. Heisey’s opinions lacked
20 support from his treatment notes and adequate explanation. AR 28; *see also Burch*

1 *v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). Accordingly, the ALJ did not err in
2 partially rejecting Dr. Heisey's opinions.

3 **ii. SLP Endrina**

4 The ALJ gave "some weight" to SLP Endrina's findings that J.H. was
5 intelligible fifty to sixty percent of the time when not repeating or rephrasing, and
6 seventy percent of the time after such repetition. AR 27–28. The ALJ noted that
7 SLP Endrina's opinion did not address the childhood function domains. AR 28. And
8 while SLP Endrina observed that J.H.'s stuttering interfered with his ability to
9 understand directions, the ALJ remarked that he "did not explain this observation
10 very well and it is unclear how the claimant's ability to understand instructions
11 would be impacted since the claimant did not have a hearing deficit." AR 31. "An
12 ALJ is not required to take [] opinions at face value, but may take into account the
13 quality of the explanation when determining how much weight to give a medical
14 opinion." *Ford*, 950 F.3d at 1155. The ALJ reasonably interpreted the evidence to
15 partially discount SLP Endrina's opinion, so the Court cannot find that the ALJ
16 harmfully erred. *See Burch*, 400 F.3d at 680.

17 **iii. Dr. Patterson**

18 The ALJ gave "limited weight" to Dr. Patterson's opinion, finding it "vague
19 and not well-supported." AR 28. The ALJ also noted that was "unclear" whether
20 Dr. Patterson considered that J.H.'s stuttering was worse around strangers and when

1 he was nervous. *Id.* Plaintiff contends this is error, because Dr. Patterson reviewed
2 prior IEP documents and completed a full evaluation of J.H. which included
3 narrative reasoning. ECF No. 14 at 20. Plaintiff emphasizes that Dr. Patterson
4 “specifically noted that even getting a complete history was difficult due to JH’s
5 stutter and this ‘interfered with virtually all aspects of communication,’ JH’s speech
6 was both ‘very slow’ and ‘laborious,’ he could not keep pace with a normal
7 conversation, and this very severe stutter was evident during casual conversation
8 and well-documented by the school.” ECF No. 14 at 20–21 (quoting AR 553, 555
9 & 556). And Plaintiff also notes that Dr. Patterson addressed that J.H.’s stuttering
10 was worse around new people and when he was nervous on the first page of his
11 report. AR 553. This Court agrees with Plaintiff and finds that the ALJ did not
12 support its decision to not fully credit Dr. Patterson’s opinion with substantial
13 evidence.

14 **iv. Dr. Winfrey**

15 Plaintiff argues that the ALJ erred by crediting Dr. Winfrey’s opinion
16 because she did not examine J.H., and her opinion is inconsistent with the other
17 opinions in the record. ECF No. 14 at 21. Defendant argues that the ALJ’s finding
18 was reasonable but does not provide any argument on how the record supports Dr.
19 Winfrey’s opinion. *See* ECF No. 15 at 16. On remand, the ALJ is instructed to give
20 weight to this non-examining source only to the extent that it is consistent with other

1 evidence in the record. *See Lester*, 81 F.3d at 831.

2 **D. Assessment of the Listings and Domains**

3 **1. Listing 112.02**

4 Plaintiff argues that the ALJ erred by failing to properly assess whether J.H.
5 met or equaled Listing 112.02. ECF No. 14 at 15. Dr. Winfrey stated that Listing
6 112.02 was “more applicable” to disorders where there is a decline in speech. AR
7 25. But Listing 112.02(A)(4) is met with a clinically significant deviation in normal
8 development *or* a significant cognitive decline from a prior level of functioning in
9 language and an extreme limitation in one or a marked limitation in two areas of
10 mental functioning. 20 C.F.R. Part 404, Subpart P, App’x 1, § 112.02(B)(1)(a).

11 “An ALJ must evaluate the relevant evidence before concluding that a
12 claimant’s impairments do not meet or equal a listed impairment. A boilerplate
13 finding is insufficient to support a conclusion that a claimant’s impairment does not
14 do so.” *Lewis*, 236 F.3d at 512. The ALJ erred by discounting Listing 112.02
15 without evaluating the relevant evidence.

16 **2. Domains**

17 As explained above, the ALJ erred in its determination that J.H. did not have
18 marked or extreme limitations in each of the Domains because he showed
19 improvement and because his limitations worsened when he was nervous. The
20 Court thus directs the ALJ to reevaluate J.H.’s limitations in each of the Domains

1 in accordance with this Order.

2 Accordingly, **IT IS HEREBY ORDERED:**

- 3 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is
4 **GRANTED**.
- 5 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
6 **DENIED**.
- 7 3. The Clerk's Office shall **ENTER JUDGMENT** in favor of
8 **PLAINTIFF** and thereafter **CLOSE** the file.
- 9 4. This matter shall be **REMANDED** to the Social Security
10 Administration for further proceedings consistent with this order.

11 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
12 provide copies to all counsel.

13 **DATED** this 11th day of May 2021.

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15 SALVADOR MENDOZA, JR.
United States District Judge

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ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT – 20